

D.T.E. 03-69

Petition of Commonwealth Electric Company d/b/a NStar Electric, pursuant to G.L. c. 164,  
§§ 1A, 1G, 76, and 94, for approval of asset divestiture.

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FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY d/b/a  
NSTAR ELECTRIC  
Petitioner

Thomas F. Reilly, Attorney General  
By: Colleen McConnell  
Assistant Attorney General  
Office of the Attorney General  
Utilities Division  
Public Protection Bureau  
200 Portland Street  
Boston, Massachusetts 02114  
Intervenor

## I. INTRODUCTION

On July 9, 2003, pursuant to G.L. c. 164, §§ 1A(b)(1), 1G, 76, and 94, and the terms of the restructuring plan approved by the Department of Telecommunications and Energy (“Department”) in Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. / D.T.E. 97-111 (1998) (“Restructuring Plan”), Commonwealth Electric Company d/b/a NStar Electric (“Commonwealth” or “Company”) filed a petition for approval of an asset divestiture (“Petition”). The Petition concerns the sale of Commonwealth’s former headquarters at 2421 Cranberry Highway in Wareham, Massachusetts (“Property”) to W/S Development Associates LLC (“W/S Development”), for \$7.5 million (Petition at 1, 4). In its Petition, the Company seeks: (1) approval of the divestiture of the Company’s interest in the Property to W/S Development for \$7.5 million; and (2) approval of the Company’s proposed ratemaking treatment to reduce the variable component of its transition charge (Petition at 6). The Department docketed this matter as D.T.E. 03-69.

Pursuant to notice duly issued, the Department held a public hearing and procedural conference on September 3, 2003. The Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention, pursuant to G.L. c. 12, § 11E. An evidentiary hearing was held on October 22, 2003. In support of its petition, the Company sponsored the testimony of Stephen J. Carroll, real estate manager for Commonwealth’s parent company, NSTAR Electric and Gas Corporation (“NSTAR”). The evidentiary record contains 13 exhibits. On November 7, 2003, the Attorney General

indicated that he did not identify any issues requiring comment and that he would not submit a brief. The Company filed its brief on November 7, 2003 (“Brief”).

## II. DESCRIPTION OF THE PROPOSED DIVESTITURE

Commonwealth proposes to divest the location of its former headquarters. The Property consists of a three story office building, comprising approximately 119,000 square feet, on a parcel of land approximately 48 acres in Wareham, Massachusetts (Exh. COM-SJC-1, at 5). Following the merger of Commonwealth with Boston Edison Company to form NSTAR, NSTAR consolidated the majority of its office operations into a single facility in Westwood, Massachusetts (Exhs. COM-SJC-1, at 5; COM-DTE 1-1, at 2). This consolidation included moving Commonwealth’s headquarters to Westwood and placing the Property for sale (id.). The Property is currently vacant (Exh. COM-DTE 1-1, at 2; Tr. at 27).<sup>1</sup>

Commonwealth asserts it used a competitive and open sale process designed to maximize the value of the Property (Exhs. COM-SJC-1, at 7-8; COM-DTE 1-1, at 1-2; Tr. at 13-18). The Company solicited offers for the Property through a variety of means, including newspaper advertisements, mass electronic mailings, flyers, direct calls and real estate listing services (Exh. COM-SJC-1, at 6). From the initial offering in 2001 through May 2003, the Company received offers from six parties as a result of the solicitations (Exh. COM-SJC-1, at 6; Tr. at 13-18). Commonwealth states that its marketing efforts attempted to identify any potential buyers and that no party was excluded from negotiating with the

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<sup>1</sup> The Company notes that the office building is empty, however ongoing carrying costs for the Property include costs associated with the continuing performance of minimal maintenance functions for safety purposes at the facility (Tr. at 27).

Company or making an offer (Exh. COM-SJC-1, at 7; Tr. at 43-44). Commonwealth states that the marketing efforts culminated in the execution of a Purchase and Sale Agreement (“P&S”) with W/S Development on May 19, 2003 (Exh. COM-SJC-1, at 9; Tr. at 17-18).

Commonwealth asserts that the price obtained in the sale maximizes the value of the Property (Exh. COM-SJC-1, at 7). Commonwealth states the proposed sale price of \$7.5 million, which amounts to approximately \$156,000 per acre, compares favorably on a price-per-acre basis for similar commercial properties sold in southeast Massachusetts since 1999 (Exh. COM-DTE-1-1(b)(Att.); RR-DTE-4(Att.); Tr. at 48-50). The Company asserts it achieved a high sale price despite a generally depressed economy and sluggish commercial real estate market in southeast Massachusetts (Exhs. COM- SJC-1, at 7; COM-DTE-1-4(Att.)). Commonwealth also contends that the P&S represents the best binding agreement that the Company was able to negotiate during the two years it solicited offers for the Property (Exh. COM-SJC-1, at 8; Tr. at 12-18).

Commonwealth explains that to further maximize the value of the Property, closing of the P&S is contingent upon various local and state approvals (Exh. COM-SJC-1, at 9-10; Tr. at 24-26). Commonwealth states the sale price reflects the value placed on the Property by W/S Development as a retail shopping center (Exhs. COM-SJC-1, at 10; COM-DTE 1-1, at 1-2; Tr. at 21). The Company notes that the zoning of the Property allows for a variety of uses, however W/S Development’s planned redevelopment of the Property requires successfully attaining additional zoning, environmental and traffic permits (Exhs. COM-SJC-1, at 10-11; COM-DTE 1-1, at 1-2; Tr. at 24-25). The Company states the P&S allows W/S

Development a period of 18 months to obtain the necessary permits (Exh. COM-SJC-1, at 10-11; Tr. at 24-25). Commonwealth further explains that, should W/S Development exercise all commercially reasonable efforts in pursuing permits and fail to obtain one or more of the necessary permits, W/S Development may terminate the P&S without incurring a penalty (Exh. COM-SJC-1, at 10; Tr. at 24-25).<sup>2</sup>

Commonwealth proposes to apply the net proceeds of the sale, approximately \$1.2 million,<sup>3</sup> to mitigate the Company's transition charge (Exhs. COM-SJC-1, at 11-12; COM-SJC-4). The Company states its proposed treatment is consistent with Chapter 164 of the Acts of 1997 ("Restructuring Act" or "Act") and the Company's Restructuring Plan (Exhs. COM-SJC-1, at 11; COM-DTE 1-2). Further, the Company states the proposed treatment will provide benefits and savings to customers that would otherwise not be available absent this sale (Exhs. COM-DTE 1-2; COM-SJC-1, at 11-12). Commonwealth contends the Act suggests that proceeds from sales of all utility property, and not just generation related property, are to be applied to mitigate transition charges (Exh. COM-DTE 1-2, citing G.L. c. 164, § 1A(b)(1)). Commonwealth states that, in its Restructuring Plan, the Company committed to

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<sup>2</sup> The Company explains that in the event W/S Development demonstrate it has made a good-faith effort in obtaining the necessary permits and not receive determination for one or more permits, the P&S also allows for extension of the 18 month permitting period for an additional six months (Tr. at 24-25).

<sup>3</sup> In calculating the net proceeds of the sale, Commonwealth reduces the sale price by book value of Property of \$5,887,200, \$50,000 for registry fees, \$55,000 for legal fees, \$262,500 for broker fees, and \$50,000 for miscellaneous selling costs (Exh. COM-SJC-4). Commonwealth based this estimation upon a closing date of June 2005 (Exh. COM-SJC-1 at 11).

reduce its transition charge with proceeds related to the sale or other transfer of assets, including distribution assets, as is presently proposed (Exh. COM-DTE 1-2, citing D.P.U./D.T.E. 97-111, Volume I, Appendix H at 7, n.5). Commonwealth asserts the proposed treatment benefits customers by lowering the transition charge (Exh. COM-DTE 1-2).

Commonwealth proposes to apply the net proceeds gained from the sale of the Property entirely to the variable component of the transition charge (Exhs. COM-SJC-1, at 11-12; COM-SJC-4). Commonwealth contends this treatment is consistent with Department precedent and provides customers with several benefits (Exhs. COM-SJC-1, at 11; COM-DTE 1-2). Commonwealth maintains that the Department has previously determined that net proceeds gained from the sale of an asset are to be returned to customers through the fixed component of a company's transition charge only to the extent that those same asset-related costs had previously been reflected in the fixed component (Exh. COM-DTE 1-2, citing Cambridge Electric Light Company, D.T.E. 02-76 (2002)). Commonwealth argues that, because Property related costs have not previously been reflected through the fixed component of the Company's transition charge, the Company's proposal to return all of the net proceeds gained from the sale of the Property to customers through the variable component is consistent with Department precedent (Exh. COM-DTE 1-2). The Company asserts that applying the net proceeds to the variable component benefits customers by returning the net proceeds to customers in one year rather than over several years (id.). The Company also asserts the proposed treatment

additionally benefits customers by avoiding the anomaly of a negative fixed charge, and avoids potential deferrals that might otherwise occur (id.).

### III. ANALYSIS AND FINDINGS

#### A. Divestiture of Property

Typically the Department does not review the sale of a distribution asset until a company's next base rate proceeding. However, in this proceeding, the Company and W/S Development have conditioned the sale on the pre-approval by the Department of the divestiture (Exh. COM-SJC-3 at § 8.2.1). Therefore, the Company is seeking Department approval of the transaction prior to closing.

When reviewing a company's proposal to divest its generating units, the Department considers the consistency of the proposed transactions with the company's restructuring plan, or in some cases the company's restructuring settlement, and the Restructuring Act.

Cambridge Electric Light Company, D.T.E. 02-76, at 7 (2003). A divestiture transaction will be determined to be consistent with the company's restructuring plan or settlement and the Restructuring Act if the company demonstrates to the Department that the “sale process is equitable and maximizes the value of the existing generation facilities being sold.”

G.L. c. 164, § 1A(b)(1). Although the current petition is for the sale of a distribution asset, a similar showing should be made, namely that: (1) that the sale process was equitable, and (2) that the process maximized the value of the distribution asset being sold.

W/S Development is a Massachusetts limited liability company unaffiliated with the Company (Exh. COM-SJC-3). The Company conducted an open and competitive process by

working with its real estate broker, Meredith and Grew Incorporated (“Meredith and Grew”), to market the Property locally, nationally and internationally over a 2-year period (Exh. COM-SJC-1, at 5-6). No party contested the Company’s assertion that the sale process was equitable. The Department finds that Commonwealth demonstrated that a sale of the Property using Meredith & Grew was thorough and fair, and that the Property was marketed using a wide variety of tools including the internet. Accordingly, the Department finds that the sale process used by Cambridge was equitable. In addition, the Department finds that the sale process used by the Company maximized the value of the distribution assets being sold. The sale price of \$7.5 million, which amounts to approximately \$156,000 per acre, compares favorably on a price-per-acre basis for similar commercial properties sold in southeast Massachusetts since 1999 (Exh. COM-DTE-1-1(b)(Att.); RR-DTE-4(Att.); Tr. at 48-50).

In addition, the Department finds that the Company correctly calculated the net proceeds of the sale of \$1.2 million by reducing the sale price of \$7.5 million by the costs of the sale including (1) the book value of the Property (\$5,887,200), (2) registry fees (\$50,000), (3) legal fees (\$55,000), (4) broker fees (\$262,500), and (5) miscellaneous selling costs (\$50,000) (Exh. COM-SJC-4). Therefore, the Department approves Commonwealth’s divestiture of the Property.

B. Ratemaking Treatment of the Gain on Sale

The Department’s long-standing policy with respect to gains on the sale of utility property has been to require the return to ratepayers of the entire gain associated with the sale. Boston Gas Company, D.P.U. 1100, at 62-65 (1982). If utility assets are recorded



above-the-line, ratepayers support those assets through the utility's allowed rate of return.

Therefore, if the property is later sold by the utility, an adjustment is necessary to flow

through to ratepayers the appreciation on assets that they have supported in rates as reflected

by a return on the investment. Barnstable Water Company, D.P.U. 93-223-B at 12-13 (1994);

Commonwealth Electric Company, D.P.U.88-135/151, at 92 (1989). In D.P.U. 1100, at

62-65, we stated the rationale for this ratemaking treatment as follows:

The Company and its shareholders have received a return on the use of these parcels while they have been included in rate base, and are not entitled to any additional return as a result of their sale. To hold otherwise would be to find that a regulated utility company may speculate in utility property and, despite earning a reasonable rate of return from its customers on that property, may also accumulate a windfall through its sale. We find this to be an uncharacteristic risk/reward situation for a regulated utility to be in with respect to its plant in service.

Typically, proceeds from the gain on sale of utility property are returned to ratepayers through base rates at the time of the company's next rate case by amortizing them over a number of years. However, here, the Company proposes to return the proceeds to ratepayers by reducing the variable component of its transition charge by \$1.2 million, which are the proceeds from the sale less costs that are above the remaining book value of the Property. The Department must resolve whether the net proceeds from the sale of the Property should be used to mitigate transition costs rather than using the conventional method of recovery through base rates.

The Department-approved transition charge recovers utilities' above-market costs of generation-related assets (i.e., investments and obligations that have become uneconomic as a result of the creation of a competitive generation market and have been mitigated to the

maximum extent possible). G.L. c. 164, § 1G(b)(1). In this proceeding, however, the Company proposes to return to ratepayers net proceeds related to the sale of distribution assets. To date, no proceeds from the sale of a distribution asset have been returned to ratepayers through the transition charge.

The Company's restructuring plan contains a mitigation incentive. Therefore, if the Company is allowed to return the proceeds to ratepayers through the transition charge, the Company will retain a four percent share of the proceeds and return only 96 percent of the proceeds to ratepayers (RR-DTE-3). However, there are advantages to approving the Company's proposal. First, the proceeds from the gain on the sale of the Property are returned to ratepayers immediately as opposed to at the time of the Company's next base rate proceeding. This is beneficial to ratepayers because interest charges associated with transition cost deferrals are avoided. Second, as part of the Restructuring Plan approved by the Department in D.T.E. 97-111 (1998), the Company stated that it would aggressively pursue reduction of its transition costs by using methods as the sale of real estate. D.P.U./D.T.E. 97-111 (1998) (Exh. CEC-1, Appendix D at 27, n.4). The Company's current proposal is consistent with this commitment. For these reasons, the Department accepts the Company's proposal to return the proceeds of the sale through the transition charge.

#### IV. ORDER

After notice, hearing, and consideration, it is

ORDERED: That the Petition of Commonwealth Electric Company d/b/a NStar Electric for approval of the sale of Commonwealth's former headquarters at 2421 Cranberry

Highway in Wareham, Massachusetts to W/S Development Associates LLC for \$7.5 million is

APPROVED; and it is

FURTHER ORDERED: That the Company's proposed ratemaking treatment to apply the net proceeds of the sale to reduce its transition charge is APPROVED; and it is

FURTHER ORDERED: That the Company shall submit in its next transition cost reconciliation filing a final accounting of the transaction reflecting a reconciliation of the actual net proceeds of the sale consistent with all directives in this Order; and it is

FURTHER ORDERED: That the Company shall comply with all other directives contained in this Order.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).